

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-801

SINGLE SOURCE SOLUTIONS, INC.

vs.

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

This appeal arises from the dismissal of a complaint in which the plaintiff, Single Source Solutions, Inc. (Single Source), alleged error in how the Executive Office of Health and Human Services (Executive Office) calculated the rates of reimbursement paid to rest homes under G. L. c. 118E, § 13D. A Superior Court judge ordered dismissal of the complaint on statute of limitations grounds and also because Single Source could not prevail as a matter of law, even if its claims were timely. We affirm.

Background. We begin with an overview of the rate setting process to provide context for our discussion of the procedural background. General Laws c. 118E, § 13D, requires the Executive Office to set the rates of reimbursement paid to rest homes.

¹ Department of Transitional Assistance.

That statute provides the following guidance on how the Executive Office should set those rates: "In setting such rates, the executive office shall use as base year costs for rate determination purposes the reported costs of the calendar year not more than 4 years prior to the current rate year [A]ny ceiling or maximum imposed by the executive office upon the rate of reimbursement to be paid to rest homes shall reflect the actual costs of rest home providers"

G. L. c. 118E, § 13D.

With this background in mind, we turn to the procedural history of the case. Single Source brought a complaint, alleging that from 2008 to 2017² the Executive Office used base year costs that were older than those authorized by statute and that, as a result, the rates of reimbursement paid to rest homes were less than their actual costs.³ The defendants then filed a motion to dismiss, correctly noting that (1) for 2008, 2009, and 2014, the Executive Office used base year costs that were within

² We note that prior to November 2012, the relevant statutory provisions for calculating rates of reimbursement were codified at G. L. c. 118G, § 7. As the parties' arguments and our decision do not turn on any differences between G. L. c. 118G, § 7, and G. L. c. 118E, § 13D, we analyze the parties' arguments under the latter provision.

³ Through claims for breach of contract, unjust enrichment, and conversion, Single Source sought damages and disgorgement. Single Source also requested a declaratory judgment that the rates of reimbursement for all years since 2008 were "unlawfully suppressed."

the four-year period authorized by statute and (2) for the other years, the Legislature enacted a series of special acts that specifically authorized the Executive Office's use of base year costs that were more than four years old.⁴ In response, Single Source sought to clarify its complaint by arguing that the specific base year costs used by the Executive Office, even if authorized by the special acts, resulted in rates of reimbursement that were less than rest homes' actual costs, in violation of G. L. c. 118E, § 13D. For purposes of deciding this appeal, we construe Single Source's complaint in this more favorable light.

Discussion. The primary issue on appeal, and the only one we need decide, is whether Single Source's complaint is barred by the statute of limitations. As required by statute, any "party aggrieved by an interim rate or a final rate established by the executive office . . . or by failure of the executive office to set a rate or to take other action required by law and desiring a review thereof shall, within 30 days after said rate is filed with the state secretary or may, at any time, if there

⁴ Thus, to the extent Single Source's complaint turns on the language in G. L. c. 118E, § 13D, that prohibits the Executive Office from using "the reported costs of the calendar year not more than 4 years prior to the current rate year," the complaint fails as a matter of law. See Doe v. Attorney Gen., 425 Mass. 210, 215 (1997) (more recent statute controls over prior statute, and more specific statute controls over general statute).

is a failure to determine a rate or take any action required by law, file an appeal with the division of administrative law appeals" G. L. c. 118E, § 13E. Single Source did not file an appeal within the thirty-day period for bringing an appeal, and it does not argue otherwise. Rather, Single Source argues that the thirty-day appeal period applies only when a party seeks to challenge a specific rate and that Single Source instead alleges a global challenge to how the Executive Office set all rates of reimbursement from 2008 to 2017. Single Source contends that such actions are properly brought in the Superior Court as declaratory judgment actions, at any time. Even assuming that global challenges, as described by Single Source, are not subject to the thirty-day appeal period, we disagree that Single Source's complaint is properly characterized as involving a global challenge.⁵

⁵ Single Source alternatively argues that it alleged a failure to take an action required by law (i.e., the failure to reimburse rest homes for their actual costs), and that its complaint may thus be brought at any time. See G. L. c. 118E, § 13E. We disagree, as this broad interpretation of the failure to act language would render the thirty-day appeal period for rate challenges meaningless. See Bynes v. School Comm. of Boston, 411 Mass. 264, 268 (1991) (statute should not be read to render its terms meaningless). While Single Source attempts to avoid this result by arguing that the failure to act language applies only to global challenges, as opposed to challenges to specific rates, the argument is unavailing in light of our decision that Single Source's complaint does not involve a global challenge.

In the sole case on which Single Source relies, Salisbury Nursing & Rehabilitation Ctr., Inc. v. Division of Admin. Law Appeals, 448 Mass. 365, 372 (2007), the plaintiff alleged that certain rate setting regulations were contrary to the legislative mandate. The Supreme Judicial Court noted the well-established rule that a challenge to the validity of a rate setting regulation "is properly brought in the Superior Court as an action for declaratory judgment." Id. at 371, citing G. L. c. 30A, § 7, and Massachusetts State Pharm. Ass'n v. Rate Setting Comm'n, 387 Mass. 122, 126 (1982). Single Source, however, does not challenge the validity of a rate setting regulation,⁶ and contrary to Single Source's arguments, nothing in Salisbury Nursing & Rehabilitation Ctr., Inc. stands for the proposition that a global challenge to how all rates are set is not subject to the thirty-day appeal period. Regardless, we need not decide this question, as Single Source's complaint is not properly characterized as involving a global challenge.

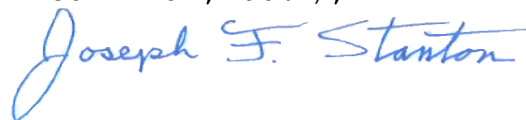
As discussed (see note 4, supra, and accompanying text), to the extent Single Source's complaint turns on the language in G. L. c. 118E, § 13D, which requires the Executive Office to use "the reported costs of the calendar year not more than 4 years

⁶ We note that Single Source has not brought a declaratory judgment action challenging the validity of the special acts, and we decline to address the viability of any such action.

prior to the current rate year," the complaint fails as a matter of law. What remains of Single Source's complaint are its allegations that the Executive Office's use of base year costs that were more than four years old resulted in rates of reimbursement that were less than rest homes' actual costs. The difficulty with viewing this as a global challenge is that rates of reimbursement and actual costs vary from rest home to rest home. Thus, whether a rest home's rate of reimbursement is less than its actual costs turns on the specific rest home at issue. While the Executive Office's use of base year rates that were more than four years old may have resulted in rates of reimbursement that were less than some rest homes' actual costs, those particular challenges should have been brought pursuant to the appeal process provided for in G. L. c. 118E, § 13E. Single Source may not avoid this statutory requirement by arguing that the same flaw underlies the rates of reimbursement for numerous rest homes.

Judgment affirmed.

By the Court (Hanlon, Agnes &
Sullivan, JJ.⁷),



Clerk

Entered: August 26, 2019.

⁷ The panelists are listed in order of seniority.